

CITY OF MANISTEE PLANNING COMMISSION

WORKSESSION AGENDA

**Thursday, November 18, 2010 7:00 p.m.
Council Chambers, City Hall
70 Maple Street, Manistee, Michigan**

I Call to Order.

II Worksession Items:

1. Medical Marihuana
2. Misc.

III Adjourn.


All Planning Commission Meetings and Worksessions are open to the Public.

Worksessions are scheduled to allow the Planning Commission the opportunity to discuss in a less formal manner than a regular meeting. No motions or decisions can be made during a worksession.



PLANNING AND ZONING
COMMUNITY DEVELOPMENT
231.398.2805
FAX 231.723-1546
www.ci.manistee.mi.us

MEMORANDUM

TO: Planning Commissioners
FROM: Denise Blakeslee 
DATE: October 28, 2010
RE: November 4, 2010 Planning Commission Meeting

Commissioners, we have the following items on the November 4, 2010 Planning Commission Agenda:

Former Harbor Village Sales Office, 100 Marina Drive - Parcel Split - This request was postponed to allow the applicant time to submit the additional information required for approval.

Medical Marihuana - The Planning Commission will continue to discuss issues relating Medical Marihuana.


If you are unable to make the meeting please call or leave a message 398-2805.



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MEMORANDUM

TO: Planning Commissioners

FROM: Denise Blakeslee 

DATE: November 15, 2010

RE: November 18, 2010 Worksession

Commissioners, we will discuss Buffer Zones relating to Medical Marihuana. Before Jon left to go out West he assembled Buffer Maps for Schools, Churches and Parks. We will review them to determine what buffer areas should be considered for the licensing ordinance that was discussed at the November meeting.

The City Attorney and Chief of Police have not sent responses regarding the drafted language for Medical Marihuana.

If you are unable to attend the worksession please call me at 398-2805. See you Thursday!!

:djb

MEDICAL MARIHUANA

Examples of Different
Buffers Between
Schools, Churches, and Parks

School
250 foot
buffer

City of Manistee



0 1,250 2,500 5,000 7,500 10,000 Feet

School 500 foot Buffer



School 1,000 foot Buffer



School
250, 500
1,000
foot
Buffers



Church
250 Foot
Buffer



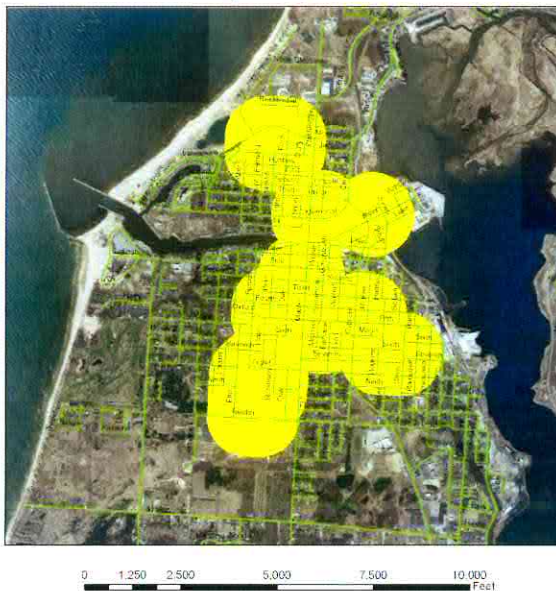
Church 500 Foot Buffer

City of Manistee



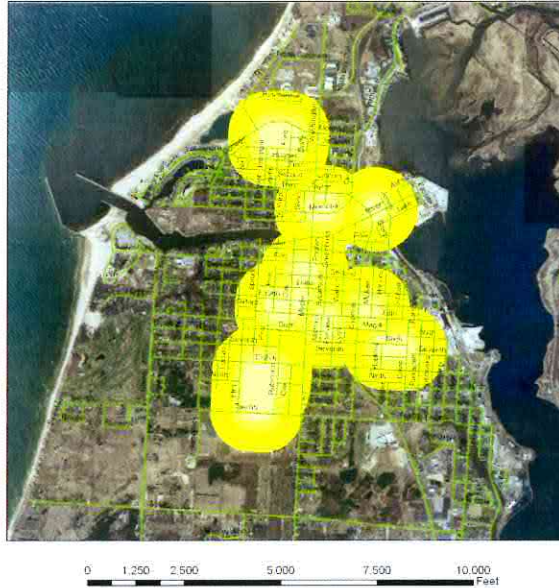
Church 1,000 foot Buffer

City of Manistee



Church
250,
500,
1,000
foot
Buffer

City of Manistee



Parks
250
foot
Buffer

City of Manistee



Parks
500
foot
Buffer



Parks
1,000
foot
buffer



Parks
250,
500,
1,000
foot
Buffer



School/
Church
250
foot
Buffer



School/
Church/
Park
250
foot
Buffer

City of Manistee



School/
Church
500
foot
Buffer

City of Manistee

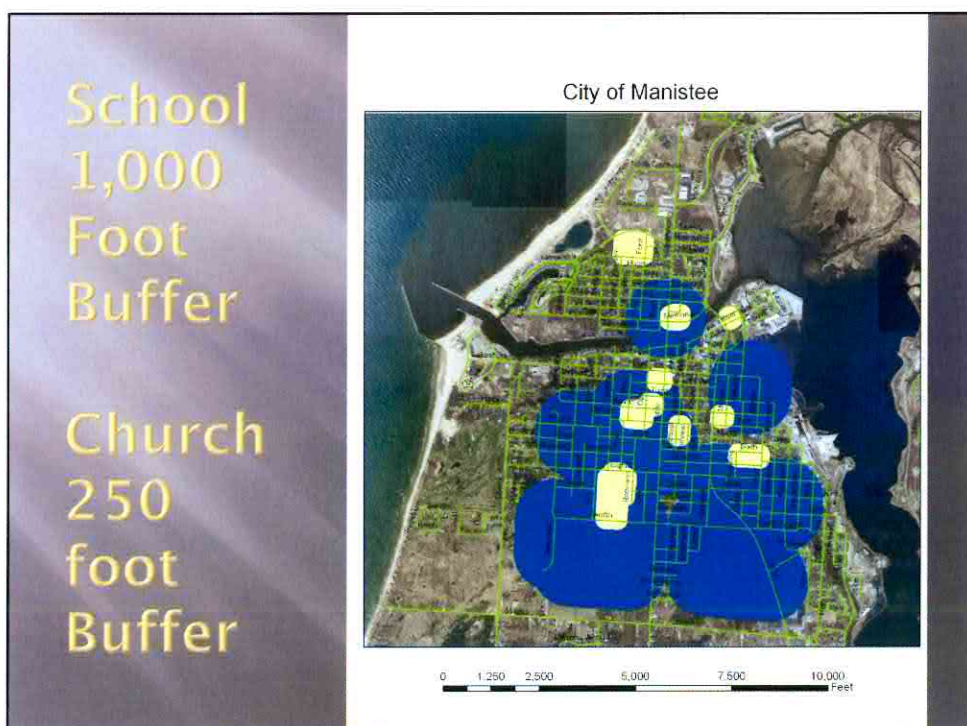
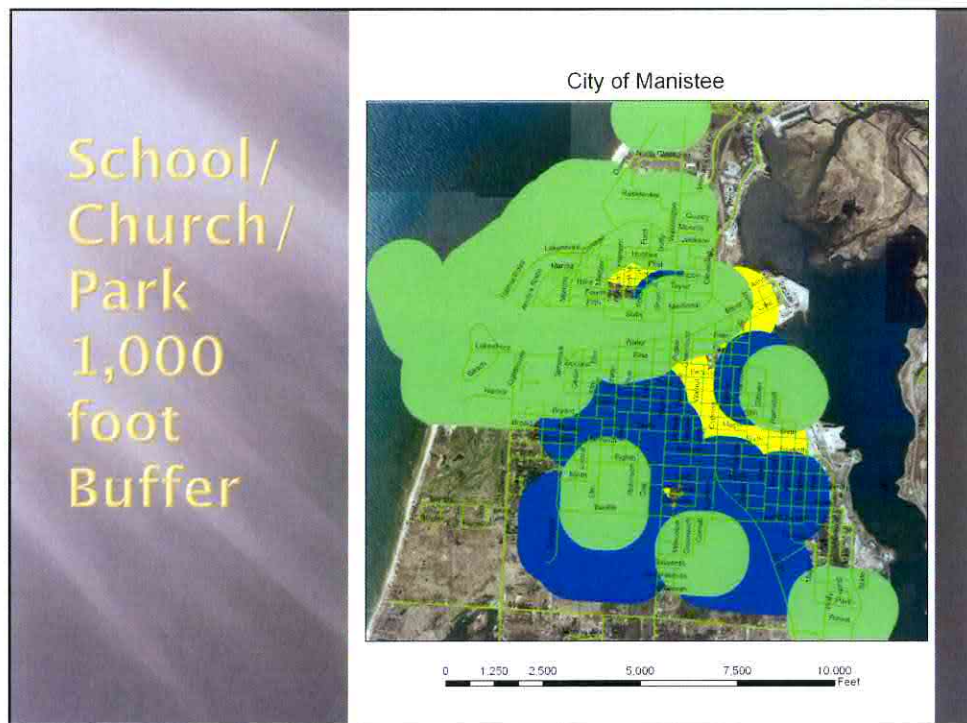


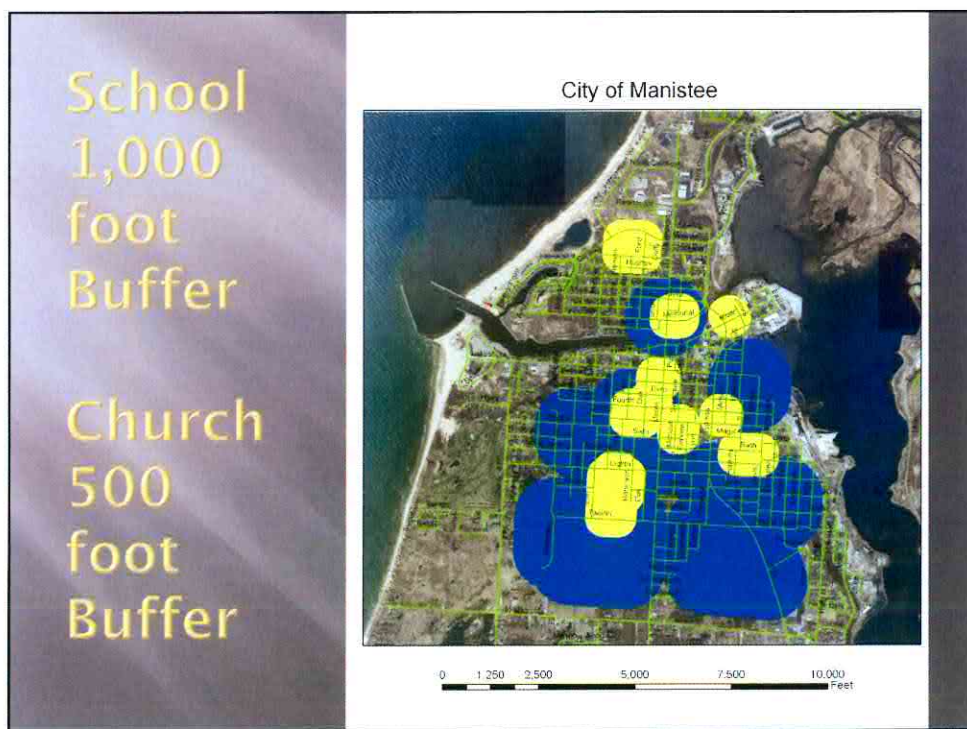
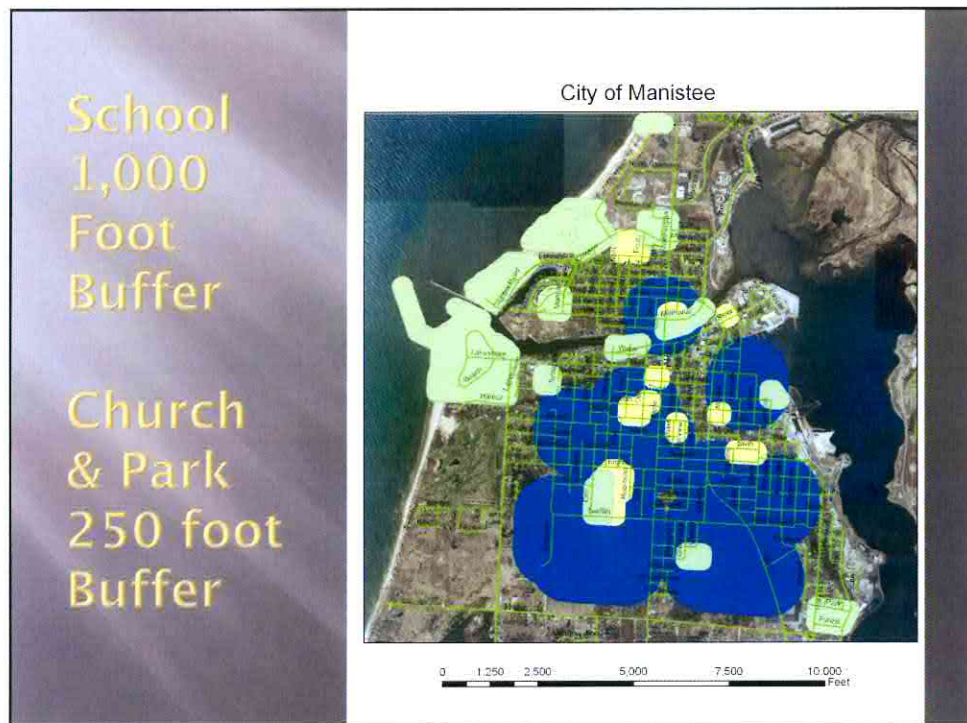
School/
Church/
Park
500
Foot
Buffer



School/
Church
1,000
foot
Buffer







School
1,000
foot
Buffer

Church
Park
500 foot
buffer

City of Manistee

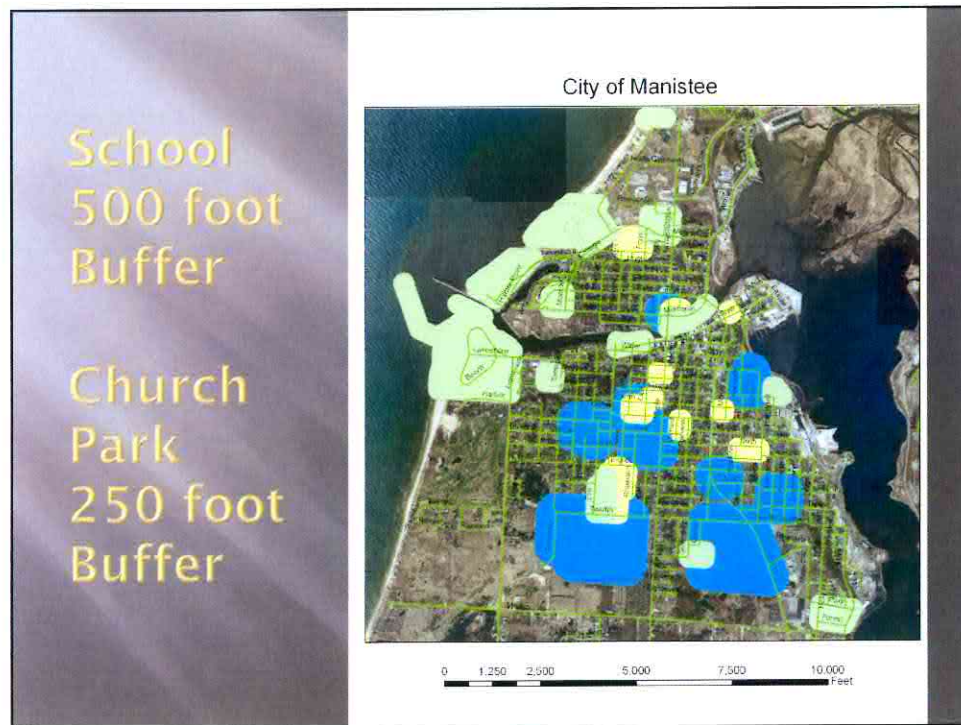


School
500
foot
Buffer

Church
250
foot
Buffer

City of Manistee





Drug-free school zone

From Wikipedia, the free encyclopedia

A **Drug-free school zone** is an area inclusive of any property used for school purposes by any school, whether or not owned by such school, within 1,000 feet of any such property, and within or immediately adjacent to school buses^[1]. It is any specific location in the community, especially an area where children congregate, that the citizens perceive as being a place where drug trafficking or alcohol availability problems exist, and the citizens decide to take action. Typically, communities have targeted schools and school yards, parks and playgrounds, public housing developments, and specific neighborhoods or city blocks^[2].

Drug-free zones around schools offer communities one way to give students a place where they can play and talk without being threatened by drug dealers and drug users. Federal law and many state and local laws increase penalties for drug-related activities in drug-free school zones^[3]. The penalties vary from jurisdiction to jurisdiction in terms of whether they stand alone as separate offenses or serve as a sentencing enhancement and in terms of the defenses available^[4].

The No Child Left Behind Act amended and reauthorized the Safe and Drug-Free Schools & Communities Act (SDFSCA) as Part A of Title IV-21st century schools. The No Child Left Behind Act authorized funds for SDFSCA program, which is the federal government's major initiative to prevent drug abuse violence in and around schools. As part of the SDFSCA, Congress allocated millions to school districts to help them establish programs to prevent the use of alcohol and other drugs, but there are no accountability standards to accompany the money^[5]. The SDFSCA was established by the 1986 Anti-Drug Abuse Act^[6]. The SDFSC Advisory Committee, was appointed by the U.S. Secretary of Education Margaret Spellings. The Committee was established to advise the Secretary on Federal, state, and local programs designated to create safe and drug-free schools, and on issues related to crisis planning^[7].

The purpose of the SDFSCA is to support programs that: (1) prevent violence in and around schools; (2) prevent the illegal use of alcohol, tobacco, and drugs; (3) involve parents and communities; and, (4) are coordinated with related Federal, State, school, and community efforts and resources to foster a safe and drug-free learning environment that promotes student academic achievement^[8].

Bibliography

General

1. ^ New Hampshire General Court. TITLE XV EDUCATION, CHAPTER 193-B, DRUG-FREE SCHOOL ZONE. Section 193-B:1. www.gencourt.state.nh.us <http://www.gencourt.state.nh.us/RSA/html/XV/193-B/193-B-mrg.htm>
2. ^ California Department of Justice. Creating a Drug Free Zone. [www.StopDrugs.org](http://www.stopdrugs.org). <http://www.stopdrugs.org/drugfreezone.html>
3. ^ Sacramento Sheriff's Department. A Drug-Free School Zone is More Than a Law and a Sign. <http://www.sacsheriff.com/index.cfm> http://www.sacsheriff.com/crime_prevention/documents/school_safety_05.cfm

Within feet from sites where children are regularly present, and specifically:
a daycare facility,

DAY CARE FACILITY: An establishment or facility, other than a private residence, providing for the care, supervision, and protection for 1 or more preschool or school age children for periods less than 24 hours a day, and where the parents or guardians are not immediately available to the child, including a facility which provides care for not less than 2 consecutive weeks, regardless of the number of hours of care per day. The term includes any facility referred to as a day care center, day nursery, nursery school, drop-in center, or parent cooperative pre-school. A group day care does not include a Sunday school, vacation bible school, or religious instructional class operated by a religious organization where children are in attendance for not greater than 3 hours per day for an indefinite period, or not greater than 8 hours per day for a period not to exceed 4 weeks during a 12-month period.

a church, synagogue, mosque, or other religious temple,

Not Defined in the Zoning Ordinance

and from a recreational park and a public community center,

OUTDOOR RECREATION – PARK: Public or private playgrounds, pocket parks, natural area, ball fields, open space preserves, arboretums, gardens, beaches, and similar uses, but not facilities designed for overnight or camping use, or as a commercial venue for performances or professional athletics.

a public or private pre-school, elementary school, middle school, high school, community college, and all other schools that have different name reference but serve students of the same age.

EDUCATIONAL FACILITY: Any building or part thereof which is designed, constructed, or used for education or instruction in any branch of knowledge, including a preschool, elementary, middle, or high school, college or university, trade school and the like, whether public or private, that meets state requirements, where applicable.

864.05 APPLICATION FOR LICENSE

A Level 1 License is required for any Caregiver who cultivates 12 Marihuana Plants or less.

A Level 2 License is required for any Caregiver who cultivates 13 to 60 Marihuana Plants (72 Plants if the Caregiver is also a Patient).

(a) The requirement of this ordinance is to license a location and not to license persons. A confidential application for a license under this section shall be submitted to the person designated as the medical marihuana officer of the City of Manistee Police Department, and shall conform to the following specifications. An application shall:

- (1) Not require the name, home address, or date of birth of a patient or caregiver.
- (2) Include the address and legal description of the precise premises, other than a patient's principal residence, at which there shall be possession, cultivation, distribution or other assistance in the use of marihuana. The fact that a caregiver or other person providing assistance to patients also has an ID Card as a patient shall not relieve the obligation to provide this information.
- (3) Specify the name and address of the place where all unused portions of marihuana plants cultivated in connection with the use of marihuana or caregiver activity at the premises shall be disposed.
- (4) Describe the enclosed, locked facility in which any and all cultivation of marihuana is proposed to occur, or where marihuana is stored, with such description including: location in building; precise measurements in feet, of the floor dimensions and height; the security device for the facility.
- (5) Describe all locations in the premises where a caregiver or other person authorized under the Act shall render assistance to a qualifying patient.
- (6) Specify the number of patients to be assisted, including the number of patients for whom marihuana is proposed to be cultivated, and the number of patients to be otherwise assisted on the premises, and the maximum number of plants to be grown or cultivated at any one time. If the location at which patients will be assisted is different from the licensed premises, the application shall provide the address of all such other locations (other than the address of a patient being assisted).
- (7) For safety and other code inspection purposes, it shall describe and provide detailed specifications of all lights, equipment, and all other electrical, plumbing, and other means proposed to be used to facilitate the cultivation of marihuana plants as such specifications relate to the need for the installation of facilities.

(b) Requirements and standards for approval of licensure and for the activity permitted.

- (1) Locations used for the cultivation of marihuana by caregivers and any other person permitted under the Act, and the location used for the provision of assistance to patients by caregivers or any other person authorized under the Act relating to medical marihuana use, including distribution or other assistance, but in all events not including a patient's principal residence which is not used to cultivate marihuana or assist in the use of medical marihuana for persons other than the patient at such residence, shall be prohibited:

Level 1 License 12 Marihuana Plants or less.

- A. Within [redacted] feet from sites where children are regularly present, and specifically: a daycare facility, a church, synagogue, mosque, or other religious temple, and from a recreational park and a public community center, a public or private pre-school, elementary school, middle school, high school, community college, and all other schools that have different name reference but serve students of the same age.
- B. Within [redacted] feet of an adult use, as defined by the City of Manistee Zoning Ordinance, Section 1879 Sexually Oriented Business.
- C. Within [redacted] feet from the site at which any other caregiver or any other person cultivates marihuana, or assists in the use of marihuana, not including a patient's principal residence which is not used to cultivate marihuana or assist in the use of medical marihuana for persons other than the patient at such residence.

Level 2 License 13 to 60 Marihuana Plants (72 Plants if the Caregiver is also a Patient).

- A. Within [redacted] feet from sites where children are regularly present, and specifically: a daycare facility, a church, synagogue, mosque, or other religious temple, and from a recreational park and a public community center, a public or private pre-school, elementary school, middle school, high school, community college, and all other schools that have different name reference but serve students of the same age.
- B. Within [redacted] feet of an adult use, as defined by the City of Manistee Zoning Ordinance, Section 1879 Sexually Oriented Business.
- C. Within [redacted] feet from the site at which any other

caregiver or any other person cultivates marihuana, or assists in the use of marihuana, not including a patient's principal residence which is not used to cultivate marihuana or assist in the use of medical marihuana for persons other than the patient at such residence.

Measurements for purposes of this sub-section shall be made from property boundary to property boundary.

- (2) The location of the Facility at which a caregiver or any other person permitted under the Act cultivates marihuana, or assists a patient in the use of marihuana shall not be the same Facility at which any other caregiver or person cultivates marihuana, or assists a patient in the use of marihuana. Accordingly, at a patient's principal residence used by such patient to cultivate marihuana for his or her personal use as permitted under the Act, there shall be not more than twelve marihuana plants being cultivated at any one time; only at a licensed Facility may there be more than twelve marihuana plants being cultivated at any one time; and, at a Facility at which a caregiver or any other person permitted under the Act cultivates marihuana for use by patients, there shall not be more than twelve marihuana plants being cultivated at any one time per patient, and in no event more than sixty marihuana plants being cultivated at any one time (which assumes cultivation for five patients, plus an additional twelve plants if the caregiver is also a patient that has not designated a caregiver to assist in providing medical marihuana).
- (3) In order to insulate children and other vulnerable individuals from such actions, all medical marihuana cultivation, and all assistance of a patient in the use of medical marihuana by a caregiver, shall occur within the confines of a building licensed under this section, and such activities shall occur only in locations not visible to the public and adjoining uses, provided, this subsection shall not prohibit a caregiver from assisting a patient at the patient's principal residence or at a hospital.
- (4) The electrical and plumbing inspectors (and other inspector(s) within whose expertise an inspection is needed) must, after inspection, provide a report confirming that all lights, plumbing, equipment, and all other means proposed to be used to facilitate the growth or cultivation of marihuana plants is in accordance with applicable code.
- (5) Considering that the distribution of marihuana is generally unlawful, and that the Act authorizes "caregivers," and does not authorize any activity such as a "dispensary" (authorized by statutes in other states) and reading the Act as a whole, the activities of caregivers are interpreted as being limited to private and confidential endeavors. Moreover, the location and identity of

a caregiver is known to patients. Accordingly:

- A. There shall be no signage identifying a caregiver use or a place at which medical marihuana is distributed.
- B. Unless conducted as part of a related licenses professional medical or pharmaceutical practice, caregiver activity shall not be advertised as a "clinic," "hospital," "dispensary," or other name customary ascribed to a multi-patient professional practice.

(c) An approval of licensure may include reasonable conditions requested in writing by the application during the application and review process.

(d) Use of land in accordance with approved application.

If approved, all use of property shall be in accordance with an approved application, including all information and specifications submitted by the applicant in reliance on which the application shall be deemed to have been approved.

(e) A Facility that exists on the effective date of this ordinance must make application for and receive approval to continue to operate; provided, an application shall be filed within fifteen days following the effective date of this ordinance. If an application for licensure under this ordinance is denied due to the minimum distance requirement standards, and a timely application has been filed seeking licensure under this ordinance, such Facility shall have sixty days from the date of application denial to cease operating at the denied site.



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November 8, 2010

Dr. George Wagoner
3 Cottage Lane
Manistee, MI 49660

Dear Dr. Wagoner:

On behalf of the City of Manistee Planning Commission I would like to express a heartfelt thank you for speaking to the Commission last Thursday about Medical Marihuana. Your story is a very touching one, few of us who have not known someone who has suffered during their battle with cancer. We are sorry for your loss and are inspired by your dedication to speak so profoundly for the patients in need of relief.

Your insight and experience will assist the Planning Commission in their assignment of drafting language for an ordinance relating to the use of Medical Marihuana in the City of Manistee.

Sincerely,

CITY OF MANISTEE

Jon R. Rose
Community Development Director

JRR:djb



City
For the Attorney -

What are the advantage
+ disadvantages of
licensure as we are
discussing versus
a simple ordinance
such as Niles MI.?

NILES MI
ORDINANCE
NO 442

**City of Niles
Regular Council Meeting
Monday, May 11, 2009**

The meeting was called to order by Mayor McCauslin in the City Council Chambers, 1345 East Main Street, at 6:00 p.m.

The Pledge of Allegiance was led by Mayor McCauslin.

PRESENT: Arndt, Boggs, Durm, Gallagher, McCauslin, Skalla, VandenHeede, Weimer, Williams
ABSENT: None
STAFF: Coulston, Eull, Ganum, Harte, Huff, Landgraf, Lehmkuhl, Miller, Millin, Wise

CITIZEN PARTICIPATION:

Steve Allen, 450 Burns, stated he had issues with the proposed marihuana ordinance and how it could affect social security disability individuals and that the city should be more rational with the ordinance because it violates patient privilege. He questioned who will enforce the ordinance.

Administrator Eull stated there are only two limitations in the ordinance: 1. cannot grow in public and (2.) must be grown inside. He further stated that enforcement will be by the police department. Mayor McCauslin stated that the City Council has not taken a position on the act, but that they have duty to protect community in general with minimal requirements. Growing the plant outside would create nuisance.

Greg Francisco, 32323 M 43, Paw Paw, MI, Director of Michigan Medical Marihuana Association, stated the ordinance is a flawed and won't stand up in court. He further stated that under the Michigan Right to Farm Act the ordinance cannot put the 1000' exclusion or grow under a solid roof or require a special use permit.

Police Chief Huff stated that the plant is not a commodity and cannot be sold.

Don Barnes, 1625 Hickory: stated the city did not have a public meeting to discuss the ordinance and that the intent of the law is to protect the patient. He questioned if the husband is the caregiver to the wife and live with the 1000' restricted area if they will be able to grow the plant.

Administrator Eull stated the city is open to discuss the ordinance with interested individuals for possible enhancement to the document.

CONSENT AGENDA:

REMOVED FROM THE AGENDA 1. Approval of the Minutes of the Regular Council Meeting of **April 27, 2009.**

2. Approval of the Bills.
3. Consideration of approving a request from the Ferry Street School Community Resource Center to hold a "Juneteenth Celebration" event on Saturday, June 20, 2009 from noon until 6:00 p.m. at the Cass Street Park and consideration of approving the following:
 - closure of Cass Street from 8th Street to 9th Street;
 - closure of 8th Street from Cass Street to Howard Street;
 - use of traffic cones/barricades to block off the street.
4. Consideration of approving a request from the Fort St. Joseph Historical Association and the City of Niles Parks and Recreation Board to hold an installation and dedication of the first historic marker along the Riverfront Park Walking Trail on May 30, 2009 from 10:00 a.m. to 11:00 a.m. and consideration of approving the following:
 - electric hook-up for a PA system at the site.
5. Consideration of accepting the proposal of \$3,313.00 from Interstate Lift and Equipment Company, Niles, MI to repair the four (4) column lifts at the Street Department Garage.
6. Consideration of accepting the low bid of \$91.00 per crew man-hour and \$725.00 per crew man-day from Nelson Tree Service, Dayton, OH for a three-year trimming maintenance contract for use by

the Utilities Department and Public Works Department.

Weimer moved, Arndt seconded, **MOTION CARRIED**, to approve Items 2 through 6 of the Consent Agenda as presented.

ROLL CALL: **AYE:** Arndt, Boggs, Durm, Gallagher, Skalla, VandenHeede, Weimer, Williams

NAY: None **ABSENT:** None **ABSTAIN:** None

CITY ADMINISTRATOR'S REPORT: **ITEMS FOR COUNCIL ACTION:**

City Administrator Eull asked Council's consideration of the following:

7. Consideration of adopting a resolution to approve the extra millage to bring the millage rates to the maximum allowed by Truth in Taxation and to set a public hearing for June 8, 2009 at 5:55 p.m. to receive comments from the public.

Weimer moved, Arndt seconded, **MOTION CARRIED**, for the adoption of the following resolution and to set the public hearing for June 8, 2009 at 5:55 p.m.:

WHEREAS, Act 5, Public Acts of Michigan, 1982, provides that with the levy of ad valorem property taxes for operating purposes for the ensuing fiscal year which yields an amount more than the sum of the taxes levied at the base tax rate on additions within the City for the ensuing fiscal year plus an amount equal to the taxes levied for operating purposes for the concluding fiscal year on existing property; and

WHEREAS, said Act 5 provides that the City of Niles may approve the levy of additional millage rates, within its present authorized of proposed millage rates, only after providing certain notice to the public and holding a public hearing for the purpose of receiving testimony and discussing the levy of additional millage rates for the ensuing fiscal year; and

WHEREAS, the City of Niles has been advised by the County Equalization director that the state taxable valuation for the 2009 tax year of property located within the City of Niles is \$218,570,545 in Berrien County, and \$1,107,985 in Cass County; and

WHEREAS, Act 5, based upon the state taxable valuation of the City of Niles would limit the district's operating tax levies to General, 14.1334; and

WHEREAS, the City of Niles, after careful examination of its estimated operating expenses for the 2009-2010 fiscal year and estimated revenues based on the state taxable valuation, has determined that the best interests of the City require the levy of the additional millage rates of: General, .4014 mills and Dial-A-Ride, .0142 mills

NOW, THEREFORE, BE IT RESOLVED that:

1. The City of Niles, pursuant to said Act 5, proposed a tentative levy of not to exceed 14.1334 mills for operating purposes which includes an additional millage rate of .4014 mills and .4858 mills for Dial-A-Ride which includes an additional millage rate of .0142.
2. A public hearing shall be scheduled for the purpose of receiving testimony and discussing the levy of an additional millage rate for 2009-2010 fiscal year.

ROLL CALL: **AYE:** Arndt, Boggs, Durm, Gallagher, Skalla, VandenHeede, Weimer, Williams

NAY: None **ABSENT:** None **ABSTAIN:** None

RESOLUTION #2009-05/1791 ADOPTED.

8. Consideration of adopting a resolution to approve the renewal of a five-year (5) ground lease at the Jerry Tyler Memorial Airport for Thomas Overmyer, 2626 Wilson Road, Niles, MI.

VandenHeede moved, Gallagher seconded, **MOTION CARRIED**, for the adoption of the following resolution:

WHEREAS, the City of Niles does own and maintain the Jerry Tyler Memorial Airport; and

WHEREAS, the City of Niles does let and lease portions of said premises in consideration of rents; and

WHEREAS, *Thomas Overmyer, 2626 Wilson Road*, Niles, Michigan, desires a Ground Lease for the maintenance and storage of aircraft at said premises; and

WHEREAS, the City of Niles has drawn up said lease, to be signed by its Mayor and Clerk, by which *Thomas Overmyer* may occupy said described premises for a period of five (5) years commencing on the 1st day of June, 2009 with renewal subject to provisions contained in said lease; and

WHEREAS, the lessee shall pay all rents and abide by all covenants and conditions of said lease for

the prescribed term.

NOW, THEREFORE, BE IT RESOLVED that the City of Niles shall enter into a Ground Lease with **Thomas Overmyer** for a term of five (5) years beginning June 1, 2009; and

FURTHER BE IT RESOLVED, that the Mayor and City Clerk be authorized and directed to execute the lease on behalf of the City of Niles.

ROLL CALL: **AYE:** Arndt, Boggs, Durm, Gallagher, Skalla, VandenHeede, Weimer, Williams

NAY: None **ABSENT:** None **ABSTAIN:** None

RESOLUTION #2009-05/1792 ADOPTED.

9. Consideration of adopting a Business Account Resolution, Authorization and Agreement with United Federal Credit Union to authorize City Administrator Terry Eull, City Clerk Ruth Harte and Finance Director Sandy Naugle to sign any necessary documents for the City, to allow for their facsimile signatures to be used and to approve Sandy Naugle and Ruth Harte to sign an agreement for initiating ACH transactions to allow for electronic payments to vendors.

Weimer moved, Arndt seconded, **MOTION CARRIED**, to adopt the Business Account Resolution, Authorization and Agreement with United Federal Credit Union and to authorize Finance Director Naugle and City Clerk Harte to sign the agreement to begin the ACH transactions as presented.

ROLL CALL: **AYE:** Arndt, Boggs, Durm, Gallagher, Skalla, VandenHeede, Weimer, Williams

NAY: None **ABSENT:** None **ABSTAIN:** None

RESOLUTION #2009-05/1793 ADOPTED.

10. Consideration of approving a request from the Utilities Department to implement a 5.8% water rate increase retroactive to May 1, 2009.

Administrator Eull stated the principal reasons for the increase are that the city has lost 10% usage resulting in a decrease in revenues and the bond for the improvement of the water system which will continue for another 15 years.

Jim Lehmkuhl, Utilities Manager stated the department will be doing a cost to service study on an annual basis and the increase is due to a mixture of customer and usage changes.

Mayor McCauslin stated that the consumption rates will probably go down with environmental water usage cut backs.

Weimer moved, Arndt seconded, **MOTION CARRIED**, to approve the water rate increase as presented.

ROLL CALL: **AYE:** Arndt, Boggs, Durm, Gallagher, Skalla, VandenHeede, Weimer, Williams

NAY: None **ABSENT:** None **ABSTAIN:** None

11. Consideration of approving the City of Niles Community Development Block Grant Consolidated Plan for the period of 2009 – 2013.

VandenHeede moved, Gallagher seconded, **MOTION CARRIED**, to approve the CDBG Consolidated Plan for 2009 - 2013 as presented.

ROLL CALL: **AYE:** Arndt, Boggs, Durm, Gallagher, Skalla, VandenHeede, Weimer, Williams

NAY: None **ABSENT:** None **ABSTAIN:** None

12. Consideration of approving the City of Niles Community Development Block Grant FY 2009 Annual Action Plan.

VandenHeede moved, Durm seconded, **MOTION CARRIED**, to approve the CDBG FY 2009 Annual Action Plan as presented.

ROLL CALL: **AYE:** Arndt, Boggs, Durm, Gallagher, Skalla, VandenHeede, Weimer, Williams

NAY: None **ABSENT:** None **ABSTAIN:** None

- 12a. **ADDED:** Schedule a Special Council Meeting for May 18, 2009.
VandenHeede moved, Durm seconded, **MOTION CARRIED**, to schedule a Special Council meeting for May 18, 2009 at 6:00 p.m. to hold a public hearing and consider adoption of a resolution to approve the proposed Renewable Energy Plan and proposed Energy Optimization Plan.
ROLL CALL: **AYE:** Arndt, Boggs, Durm, Gallagher, Skalla, VandenHeede, Weimer, Williams
NAY: None **ABSENT:** None **ABSTAIN:** None

APPOINTMENTS:

13. Consideration of reappointing Greg Mark, Lee Beauchamp and Gene Gorton to the City of Niles Construction Board of Appeals for two-years (2) terms expiring December 31, 2010.
Weimer moved, Arndt seconded, **MOTION CARRIED**, to approve the reappointments as presented.

ATTORNEY'S REPORT:

14. **Second Reading and Enactment** of an ordinance to impose specific requirement for those individuals registering with the State of Michigan as "qualifying patients" or a "Primary caregiver" as those terms are defined in MCLA 333.26421, the Michigan Medical Marijuana Act, and to regulate the conduct of activity pursuant thereto in the City of Niles, Michigan so as to protect the health, safety and welfare of the general public.
Weimer moved, Arndt seconded, **MOTION CARRIED**, to enact the proposed ordinance as presented.
ROLL CALL: **AYE:** Arndt, Boggs, Durm, Gallagher, Skalla, VandenHeede, Weimer, Williams
NAY: None **ABSENT:** None **ABSTAIN:** None
ORDINANCE No. 442 ENACTED.

COUNCIL'S REPORT:

Boggs: Announced a fish and barbeque restaurant had opened at 1305 N. 5th Street.
Arndt: Complimented the Fire and Police Departments for their professionalism during an accident incident on Oak Street.
Williams: Announced a new restaurant had opened at the Antique Mall and a children's consignment shop will be opening soon.

MAYOR'S REPORT: No report.

Weimer moved to adjourn at 6:59 p.m.

Ruth Harte, Clerk

Date Approved

**CITY OF NILES, MICHIGAN
COUNTY OF BERRIEN
STATE OF MICHIGAN**

ORDINANCE NO. 442

An Ordinance to regulate those individuals within the City of Niles, Michigan that are qualified patients or acting as primary caregivers pursuant to the provisions of the Michigan Medical Marihuana Act.

THE CITY OF NILES, MICHIGAN ORDAINS:

SECTION 1 **FINDINGS.** The City of Niles, Michigan adopts this Ordinance based on the following findings of fact:

1. Voters in the State of Michigan approved the referendum authorizing the use of marihuana for certain medical conditions.
2. The intent of the referendum was to enable certain specified persons who comply with the registration provisions of the law to legally obtain, possess, cultivate / grow, use and distribute marihuana and to assist specific registered individuals identified in the statute without fear or criminal prosecution under limited, specific circumstances.
3. Despite the specifics of the state legislation and the activities legally allowed as set forth therein, marihuana is still a controlled substance under Michigan law and the legalization of obtaining, possession, cultivation / growth, use and distribution in specific circumstances has a potential for abuse that should be closely monitored and to the extent permissible regulated by local authorities.
4. If not closely monitored or regulated, the presence of marihuana even for the purposes legally permitted by the legislation can present an increase for illegal conduct and /or activity and this threat affects the health, safety and welfare of the residents of the City of Niles, Michigan.

It is the intention of the City Council of the City of Niles, Michigan that nothing in this ordinance be construed to allow persons to engage in conduct that endangers others or causes a public nuisance, or to allow use, possession or control of marihuana for non-medical purposes or allow activity relating to cultivation / growing, distribution or consumption of marihuana that is otherwise illegal.

SECTION 2 **PURPOSE.** It is the purpose of this Ordinance to impose specific requirements for those individuals registering with the State of Michigan as "qualifying patients" or a "primary caregiver" as those terms are defined in MCLA 333.26421, the Michigan Medical Marihuana Act, and to regulate the conduct of activity pursuant thereto in the City of Niles, Michigan so as to protect the health, safety and welfare of the general public.

SECTION 3 **DEFINITIONS.** For purposes of this Ordinance, the words and phrases as contained herein shall have the meanings as set forth in MCLA 333.26423 and the regulations adopted by the State of Michigan, Department of Community Health, pursuant to authority conferred by Section 5 of Initiated Law 1 of 2008.

SECTION 4 **COMPLIANCE REQUIRED.** Those individuals within the City of Niles, Michigan who are “qualifying patients” or “primary caregivers” as those terms are used in the Michigan Medical Marihuana Act shall comply with the requirements set forth herein for qualifying patients, Article V, for primary caregivers, Article VI.

SECTION 5 **REQUIREMENTS FOR QUALIFYING PATIENTS.** A person within the City of Niles, Michigan who has been issued and possesses a registry identification card as a qualifying patient as set forth in MCL 333.26421 et seq. shall comply with the following requirements:

1. Consumption of marihuana shall not occur in any public place.
2. Growing of marihuana shall only be allowed inside of an enclosed structure or building with walls and roof and secured with locks to prevent unintended or uninvited access.

SECTION 6 **REQUIREMENTS FOR PRIMARY CAREGIVER.** A person within the City of Niles, Michigan who has been issued and possesses a registry identification card as a primary caregiver as set forth in MCL 333.26421 shall comply with the following requirements:

1. Growing of marihuana shall only be allowed inside of an enclosed structure or building with walls and roof and secured with locks to prevent unintended or uninvited access.
2. The location from which a primary caregiver provides services to a qualifying patient shall be under the control, through written lease, contract or deed, in favor of the primary caregiver.
3. The location from which a primary caregiver grows, cultivates or otherwise provides services to a qualifying patient shall not be used by another primary caregiver, for that primary caregiver’s services as allowed under the Michigan Medical Marihuana Act.
4. The location from which a primary caregiver provides services to a qualifying patient shall not be within 1,000 feet of a drug-free school zone and shall only occur as set forth in the Zoning Ordinance of the City of Niles, Michigan.
5. Cultivation / growing or distribution of marihuana shall not occur in connection with or at a location at which any other commodity, product or service is also available.
6. No consumption of marihuana shall occur at a primary caregiver’s location for cultivation / growing, or a primary caregiver’s legal residence address, unless the primary caregiver is a qualifying patient and then such consumption shall only be by the qualifying patient / primary caregiver.

SECTION 7 **VIOLATIONS AND PENALTIES.** Any person who violates a provision of this Ordinance shall be guilty of a misdemeanor punishable by fines and /or imprisoned. Further, a person who violates the provisions of this ordinance in addition to penalties set forth herein shall be presumed to be operating a nuisance *per se* and shall be subject to suit or injunction to enjoin further conduct.

SECTION 8

SEVERABILITY. If any portion of this Ordinance or the application thereof to any person is adjudged to be invalid by a court of competent jurisdiction, such determination shall not affect the validity of any other portion of this Ordinance, or the application to any other portion of this Ordinance to any such person or other persons.

SECTION 9

EFFECTIVE DATE. This Ordinance shall become effective twenty days after the date of its enactment.

Adopted this 11th day of May, 2009.

Proposed by: Council Member: Weimer

Supported by Council Member: Arndt

Roll Call Vote:

Ayes: ALL

Nays:

Abstain:

Motion Carried: ☒

Motion Defeated: ☐

ORDINANCE DECLARED ENACTED:

This Ordinance was enacted by the City Council of the City of Niles, State of Michigan on the 11th day of May, 2009 and approved by its Mayor and Clerk on said date.

CITY OF NILES, MICHIGAN

By: _____
Michael T. McCauslin
Mayor

By: _____
Ruth Harte
Clerk